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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,865	05/31/2001	Stephen A. Lindia	11252-008	8973

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EXAMINER

STIMPAK, JOHNNA

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 10/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/870,865

Applicant(s)

LINDIA ET AL.

Examiner

Johnna R. Stimpak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a final office action upon examination of application number 09/870,865. Claims 1-9 are canceled. Claims 10 and 15-18 have been amended. Claims 10-18 are pending and have been examined on the merits discussed below.

Response to Arguments

2. Previous rejections under 35 USC 112, second paragraph, of claims 15 and 18 have been withdrawn.

3. Applicant's arguments filed 7/29/05 have been fully considered but they are not persuasive. While Applicant has amended claims to include the feature wherein a user can review performance of another person without being nominated to do so, Examiner respectfully submits that this feature is not supported in the specification. The specification mentions that a reviewer is not "obligated" to review another person, but Examiner cannot find evidence that there was ever a nomination step wherein a user is nominated or not nominated to review performance. Furthermore, in the specification, there is mention of preloaded names of people who can be reviewed and also a step wherein the user can add names to be reviewed, but it is not clear if there is some kind of nomination step occurring in order to distinguish a user that is not nominated. New rejections under 35 USC 112 have been added in response to the new amendments. In light of the specification, and for purposes of examination, the claims are construed to mean that a user is not obligated to review the performance of another person just

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because the person is listed for potential review. Prior rejections under Dirksen are upheld, but modified to reflect the new understanding of the claims.

*Examiner note: The previous analysis of claim 15 has not been modified. The rejection of claim 15 is now correctly listed under the heading for a rejection under 35 USC 103(a) to correct an error on the Examiner's part.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 10-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant's have amended the claims to recite a user reviewing a person's performance without being nominated to do so, however, there is no clear support in the specification. The specification discloses that the user is not obligated to review another user, but this is not construed as meaning the same as a nomination or lack thereof. Furthermore, when the user selects a person to review, it is stated that names are pre-loaded into the system that can be chosen from; in addition new names can be entered as well. This also is not construed to be a nomination or lack thereof. In light of the specification, and for purposes of

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examination, the claims are construed to mean that a person is not obligated to review the performance of another user just because the user is listed for potential review.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 10-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant's have amended the claims to recite a user reviewing a person's performance without being nominated to do so, however, there is no clear support in the specification. The specification discloses that the user is not obligated to review another user, but this is not construed as meaning the same as a nomination or lack thereof. Furthermore, when the user selects a person to review, it is stated that names are pre-loaded into the system that can be chosen from; in addition new names can be entered as well. This also is not construed to be a nomination or lack there of. In light of the specification, and for purposes of examination, the claims are construed to mean that a person is not obligated to review the performance of another user just because the user is listed for potential review.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

9. Claims 10-14 and 16-18 are rejected under 35 U.S.C. 102(a and e) as being anticipated by Dirksen et al, US 6,853,975.

As per claim 10 (amended), Dirksen et al teaches selecting, by a user of the system, a person whose employment performance the user desires to review but has not been nominated to review (column 4, lines 55 – 61 – the users initiate the rating process and select the name of the person they want to rate; when the user is notified that they have been requested to review another person, there is no indication that that person is obligated or required to do so); inputting employee performance review information into the system by the user (column 5 – the ratings information is input into the system by the user); processing employee performance review information input into the system by the user (column 5, lines 1-25 – the information is processed for report preparation); and storing employee performance review information input into the system by the user (column 5, lines 1-25 – the rating data is stored and submitted to an external company for processing).

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As per claim 11, Dirksen et al teaches selecting, by the user, at least one of himself, a superior, a peer, a subordinate and a client to review the user's employment performance (column 1, lines 50-53 - the user selects a group of raters who will complete the ratings process).

As per claim 12, Dirksen et al teaches inputting step comprises inputting of said employee performance review information over a communication network (column 3, lines 25-30 – the evaluation information is transmitted over a network).

As per claim 13, Dirksen et al teaches the communication network is in the Internet (column 3, lines 25-30 – teaches the Internet).

As per claim 14, Dirksen et al teaches the communication network is a business enterprise intranet (column 3, lines 33-37 – the intranet is used for access to the rating system).

As per claim 16, Dirksen et al teaches means for requiring approval by the users manager of persons selected by the user to review the user's employment performance and persons selected by the user whose employment performance the user desires to review but has not been nominated to review prior to processing and storage of employee performance review information input into the system by the user (column 3, lines 8-25 – the user submits a list of raters for approval by the manager, upon approval/disapproval, the list is stored on an internal file; when the user proceeds to the performance rating step, inherently the persons the user is rating have been approved since they are listed for selection).

As per claim 17, Dirksen et al teaches means for preloading into the storage means a roster of persons with whom the user has had substantial employment related interaction during a relevant review period, wherein the roster of persons includes that may be selected by the user to review the user's employment performance and persons that may be selected by the user whose

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employment performance the user desires to review but has not been nominated to review (column 3, lines 8-25 – the user submits a list of raters for approval by the manager, upon approval/disapproval, the list is stored on an internal file; when the user proceeds to the performance rating step, inherently the persons the user is rating have been approved since they are listed for selection).

As per claim 18, Dirksen et al teaches entering additional persons into the roster by the user (see figure 1 – there is a rater nomination form that the ratee can update).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dirksen et al, US 6,853,975.

As per claim 15, Dirksen et al does not explicitly teach inputting said employee performance review information by the user while the disconnected from the communication network. However, it is old and well known in the art of communication networks to allow for work to be complete while disconnected from the Internet wherein the information can be stored and communicated over a network when there is a network connection present. This feature allows for convenience to the operator wherein he or she can complete the rating while away from the office.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnna R. Stimpak whose telephone number is 571-272-6736. The examiner can normally be reached M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JS

10/12/05

Susanne Diaz
SUSANNA M. DIAZ
PRIMARY EXAMINER

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